

1.1 A bill for an act

1.2 relating to real property; providing for the Minnesota Subprime Borrower Relief
1.3 Act of 2009; proposing coding for new law in Minnesota Statutes, chapter 583.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[583.33] CITATION.**

1.6 Sections 583.33 to 583.40 shall be cited as the "Minnesota Subprime Borrower
1.7 Relief Act of 2009."

1.8 Sec. 2. **[583.34] DEFINITIONS.**

1.9 Subdivision 1. **Scope.** For purposes of sections 583.33 to 583.40, the terms defined
1.10 in this section have the meanings given to them.

1.11 Subd. 2. **The act.** "The act" means the Minnesota Subprime Borrower Relief Act
1.12 of 2009.

1.13 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

1.14 Subd. 4. **Deferment payment.** "Deferment payment" means the monthly amount
1.15 that is due to the foreclosing lender by an eligible foreclosed borrower under section
1.16 583.37 to maintain the right to deferment.

1.17 Subd. 5. **Deferment period.** "Deferment period" means the period that begins on
1.18 the effective date of the act and expires one year following the effective date of the act.

1.19 Subd. 6. **Deferment right.** "Deferment right" means the relief provided to an
1.20 eligible foreclosed borrower in section 583.35.

1.21 Subd. 7. **Eligible foreclosed loan.** "Eligible foreclosed loan" means a residential
1.22 mortgage loan for which a foreclosing lender has scheduled a foreclosure sale under
1.23 chapter 580 or 581 or schedules a foreclosure sale during the deferment period for which:

2.1 (1) the closing of the loan occurred after January 1, 2001, and prior to August 1, 2007;
2.2 and (2) either is a subprime loan, or is a loan with negative amortization for which the
2.3 required minimum payment of principal and interest increased after the date the loan was
2.4 originated. An eligible foreclosed loan does not include a loan originated by a state or
2.5 federally chartered bank, savings bank, or credit union, or an organization majority owned
2.6 by one or more credit unions.

2.7 Subd. 8. **Eligible foreclosed borrower.** "Eligible foreclosed borrower" means a
2.8 borrower who: (1) is a mortgagor under an eligible foreclosed loan; and (2) resides at the
2.9 mortgaged property and intends to reside at the mortgaged property at least until the end
2.10 of the deferment period. A borrower does not reside at the property unless the property
2.11 has been the borrower's primary residence for six months prior to the date of the affidavit
2.12 of deferment.

2.13 Subd. 9. **Foreclosing lender.** "Foreclosing lender" means the mortgagee who is
2.14 foreclosing the mortgage of an eligible foreclosed borrower.

2.15 Subd. 10. **Mortgage foreclosure counselor.** "Mortgage foreclosure counselor"
2.16 means an individual who provides mortgage foreclosure counseling on behalf of a
2.17 nonprofit or government agency that is a member of the Minnesota Home Ownership
2.18 Center's network.

2.19 Subd. 11. **Minnesota Residential Mortgage Originator and Servicer Licensing**
2.20 **Act definitions.** The following terms defined in section 58.02 have the same meanings for
2.21 purposes of sections 583.33 to 583.40: "residential mortgage loan"; "residential mortgage
2.22 servicer or servicer"; "residential real property" or "residential real estate"; "subprime
2.23 loan"; "negative amortization" and "fully indexed rate." For purposes of sections 583.33
2.24 to 583.40, "subprime loan" does not include a subprime loan originated by a state or
2.25 federally chartered bank, savings bank, or credit union.

2.26 Sec. 3. **[583.35] RIGHT TO FORECLOSURE DEFERMENT.**

2.27 An eligible foreclosed borrower has the right to defer a foreclosure sale under
2.28 chapter 580 or 581 until the expiration of the deferment period by providing an affidavit
2.29 of deferment to the foreclosing lender in accordance with section 583.36. A foreclosing
2.30 lender shall cancel a foreclosure sale if the eligible foreclosed borrower has submitted to
2.31 the foreclosing lender an affidavit of deferment prior to or at the time of the foreclosure
2.32 sale, unless the lender has served a notice of denial in accordance with section 583.38. A
2.33 foreclosing lender shall also provide written notice of receipt of an affidavit of deferment
2.34 to all parties with a recorded request for notice of mortgage foreclosure under section
2.35 580.032 or who are listed as a holder of a security interest in the subject property in the

3.1 affidavit of deferment. A lender is not required to cancel a foreclosure sale if a borrower
3.2 has previously obtained a deferment under this act. Upon expiration of the deferment
3.3 period or the loss of the deferment, a foreclosing lender may schedule a deferred
3.4 foreclosure sale by publishing the notice of foreclosure sale once in the newspaper in
3.5 which the original advertisement was published and by serving a copy of the notice of
3.6 foreclosure sale in a like manner as a summons in a civil action in the district court upon
3.7 the person in possession of the mortgaged premises, if the same are actually occupied, at
3.8 least four weeks prior to the sale.

3.9 Sec. 4. **[583.36] AFFIDAVIT OF DEFERMENT.**

3.10 Subdivision 1. **Affidavit of deferment.** The affidavit of deferment shall state the
3.11 name of the eligible foreclosed borrower, the address of the property in foreclosure, and
3.12 contain the following statements:

3.13 "(1) I am the borrower on a mortgage loan on residential property located at [address
3.14 of property] (hereinafter "subject property");

3.15 (2) A foreclosure sale has been scheduled on the subject property;

3.16 (3) I currently reside at the subject property;

3.17 (4) I have resided at the subject property as my primary residence for six months
3.18 prior to the date of this affidavit;

3.19 (5) If permitted to reside at the subject property, I intend to reside at the subject
3.20 property until at least [end of deferment period];

3.21 (6) I have sought the assistance of a mortgage foreclosure counselor and during the
3.22 deferment I agree to continue to use the assistance of a mortgage foreclosure counselor to
3.23 negotiate in good faith with the foreclosing lender to modify the terms of the mortgage
3.24 on the subject property;

3.25 (7) I believe that the mortgage loan on the subject property is either:

3.26 (i) a subprime loan; or

3.27 (ii) a loan with negative amortization for which the required minimum payment
3.28 has increased."

3.29 The affidavit shall be signed by at least one eligible foreclosed borrower who is the
3.30 mortgagor of the residential real property being foreclosed. The affidavit also shall be
3.31 signed by a mortgage foreclosure counselor solely to certify that the borrower has sought
3.32 the assistance of the mortgage foreclosure counselor.

3.33 Subd. 2. **Service on foreclosing lender.** An affidavit of deferment shall be served
3.34 by personal service, United States mail, or other reliable delivery service to the address

4.1 provided in the notice of right to deferment or to the address of the counsel for the
4.2 mortgagee in the notice of foreclosure.

4.3 Subd. 3. **Acknowledgment by foreclosing lender.** Unless the foreclosing lender
4.4 has served a notice of denial under section 583.38, the foreclosing lender shall, within
4.5 ten days of receiving the affidavit of deferment, provide to the eligible foreclosed
4.6 borrower a written acknowledgment that it has received the affidavit of deferment. The
4.7 acknowledgment shall state the following:

- 4.8 (1) that the foreclosure sale has been canceled;
4.9 (2) the deferment payment amount that is due by the eligible foreclosed borrower;
4.10 (3) the date that the first deferment payment is due;
4.11 (4) the date that each subsequent deferment payment is due; and
4.12 (5) the address to which the borrower should send the deferment payment or
4.13 the payment delivery methods that are acceptable to the foreclosing lender. The
4.14 acknowledgment shall be on a single sheet of paper, shall use plain language, and
4.15 no other documents shall be included with the acknowledgment. The bottom of the
4.16 acknowledgment shall include the following disclosure in bold, 14-point type:

4.17 The cancellation of the foreclosure sale on your property is the result of a law passed
4.18 by the Minnesota Legislature in 2009. You must make the monthly payment in full
4.19 by the due dates listed in this letter. If you do not make the payments on time, we
4.20 will have the right to schedule a foreclosure sale on your property.

4.21 Subd. 4. **Charges prohibited.** A foreclosing lender shall not charge an eligible
4.22 foreclosed borrower any amount other than the deferment payment for exercising the
4.23 deferment right.

4.24 Sec. 5. **[583.37] BORROWER PAYMENT AND RESIDENCY REQUIREMENTS.**

4.25 Subdivision 1. **Borrower payment required.** An eligible foreclosed borrower
4.26 who has a deferment right shall make monthly payments to the foreclosing lender. The
4.27 payment shall be made no later than the 15th day of each month. The first payment is not
4.28 due until the 15th day of the month that is a minimum of 30 days after the date that the
4.29 foreclosing lender sends the acknowledgment required by section 583.36, subdivision 3.

4.30 Subd. 2. **Amount of payment.** For an eligible foreclosed borrower with a subprime
4.31 loan, the amount of payment shall be the lesser of: (1) the monthly payment of principal
4.32 and interest on the date the loan was originated; or (2) 65 percent of the monthly payment
4.33 of principal and interest at the time the borrower defaulted prior to foreclosure. For an
4.34 eligible foreclosed borrower with a negative amortization loan that is not also a subprime

5.1 loan, the amount of payment would be the minimum monthly payment on the date the
5.2 loan was originated.

5.3 Subd. 3. **Payment advice notice.** The foreclosing lender shall provide to the
5.4 eligible foreclosed borrower monthly written payment advice notices. The notice shall
5.5 be sent by the first day of each month until the expiration of the deferment period or
5.6 the loss of the deferment under subdivision 4. Each notice shall state (1) the amount
5.7 of payment owed from the eligible foreclosed borrower; (2) the address to which the
5.8 borrower should send the deferment payment; and (3) the date that the payment must be
5.9 received to avoid loss of the deferment right under subdivision 4. The payment advice
5.10 notice shall be on a single sheet of paper, shall use plain language, and no other documents
5.11 shall be included with the notice. The bottom of the notice shall include the following
5.12 disclosure in bold, 14-point type:

5.13 The deferment of the foreclosure sale on your property is the result of a law passed
5.14 by the Minnesota Legislature in 2009. You must continue to make the monthly
5.15 payment in full by the 15th day of each month. If you do not make the payments on
5.16 time, we will have the right to schedule a foreclosure sale on your property. The
5.17 deferment period will end on (last day of deferment period). By the end of the
5.18 deferment period, you will need to pay the entire amount that has been deferred plus
5.19 other costs allowed by law in order to avoid a foreclosure sale.

5.20 Subd. 4. **Borrower failure to pay.** An eligible foreclosed borrower who fails to
5.21 make payments in the amount required and by the date required under this section shall
5.22 lose the deferment right.

5.23 Subd. 5. **Borrower residency requirement.** An eligible foreclosed borrower loses
5.24 the right to deferment if the borrower ceases to reside at the mortgaged property during
5.25 the deferment period.

5.26 Sec. 6. **[583.38] RESOLUTION OF DISPUTES; EFFECT OF DEFERRAL.**

5.27 Subdivision 1. **Dispute as to eligible foreclosed loan status.** If the foreclosing
5.28 lender determines after a reasonable investigation and in good faith that the person
5.29 submitting an affidavit of deferment is not the mortgagor under an eligible foreclosed
5.30 loan, the foreclosing lender shall provide a notice of denial of deferment to the person
5.31 submitting the affidavit of deferment and to all parties with a recorded request for notice
5.32 of mortgage foreclosure under section 580.032 or who are listed as a holder of a security
5.33 interest in the subject property in the affidavit of deferment. The foreclosing lender must
5.34 send a notice of denial by certified mail through the United States mail within ten business
5.35 days of receiving the affidavit of deferment. The notice is effective on mailing. The notice

6.1 of denial shall be on a single sheet of paper and no other documents shall be included with
6.2 the notice. Such notice must include an explanation, in plain language, of the reasons that
6.3 the loan is not an eligible foreclosed loan. Such notice must also inform the person who
6.4 executed the affidavit of deferment that the person has the right to apply to the court for an
6.5 order deferring the foreclosure sale. A copy of the notice also must be sent by any means
6.6 to the loan counselor who signed the affidavit of deferment.

6.7 Subd. 2. **Other disputes.** For any other dispute about the deferment right or other
6.8 rights or requirements under the act, other than the arbitration of a dispute of good-faith
6.9 negotiation under section 583.381, a person can apply to the district court in the county
6.10 where the property is located for an order establishing the rights of the parties to the
6.11 dispute.

6.12 Subd. 3. **Effect of deferral right.** Nothing in this act shall alter contractual rights of
6.13 the parties to the mortgage loan other than providing the right to defer a foreclosure sale.
6.14 A bona fide purchaser of an interest in real property mortgaged by an eligible foreclosed
6.15 loan takes the interest in the real property not subject to any claims of ownership by a
6.16 party based on any rights under this act. No act, agreement, or deferment granted under
6.17 sections 583.33 to 583.40 alters the rights of other parties or lenders with an interest in the
6.18 subject property. Execution by the sheriff of the sheriff's certificate of sale is prima facie
6.19 evidence of compliance with this act, provided that the eligible foreclosed homeowner
6.20 has the remedies for monetary relief under section 583.40 for a reckless or bad faith
6.21 violation of the act.

6.22 Subd. 4. **Mortgage foreclosure counselors.** A mortgage foreclosure counselor, and
6.23 the person employing or paying the mortgage foreclosure counselor, shall not be liable to
6.24 any person for signing or failing to sign an affidavit of deferment under the act.

6.25 Sec. 7. **[583.381] RIGHT TO REVOKE DEFERMENT FOLLOWING**
6.26 **GOOD-FAITH NEGOTIATION.**

6.27 Subdivision 1. **Cancellation of deferment.** If the foreclosing lender has negotiated
6.28 in good faith to modify the eligible foreclosed loan, the foreclosing lender may send a
6.29 notice of deferment cancellation to the eligible foreclosed borrower and, no less than 30
6.30 days after sending the notice, publish a notice of foreclosure sale in accord with section
6.31 583.35. The notice shall be on a single sheet of paper and shall include the name and
6.32 contact information for an employee or representative of the foreclosing lender. The
6.33 notice must include an explanation, in plain language, of the reasons that the deferment
6.34 is being canceled. The notice must prominently state the date the notice is mailed to the
6.35 eligible foreclosed borrower and the bottom of the notice shall include the following

7.1 disclosure in bold, 14-point type: "If you do not agree that we have negotiated in good
7.2 faith to modify your loan, you may request that an arbitrator be appointed to review
7.3 your case. The arbitrator will be a volunteer who will work at no cost to you. You have
7.4 until (insert date 30 days after date of notice) to complete and mail the attached request
7.5 for arbitration form to the address listed on the form. The state of Minnesota encourages
7.6 you to contact a mortgage foreclosure counselor right away to discuss your options." The
7.7 foreclosing lender shall include a copy of the written loan modification that the foreclosing
7.8 lender offered as part of a good-faith negotiation offer under subdivision 2. No documents
7.9 other than the written loan modification offer and the arbitration request form required by
7.10 subdivision 2 shall be included with the notice. A copy of the notice also must be sent by
7.11 any means to the mortgage foreclosure counselor who signed the affidavit of deferment.

7.12 Subd. 2. **Arbitration of disputes.** (a) The eligible foreclosed borrower may dispute
7.13 a notice of deferment cancellation by sending to the commissioner a request for arbitration
7.14 form along with a copy of the notice of deferment cancellation, including a copy of the
7.15 written loan modification that the foreclosing lender asserts is a good-faith negotiation
7.16 offer under this subdivision. The request for arbitration must be delivered or postmarked
7.17 within 30 days of the date of the notice of deferment cancellation. The deferment
7.18 continues pending resolution of the dispute.

7.19 (b) On receipt of a timely request for arbitration, the commissioner shall appoint a
7.20 volunteer arbitrator to resolve the dispute as to whether the foreclosing lender negotiated
7.21 with the eligible foreclosed borrower in good faith. The commissioner may appoint any
7.22 person the commissioner deems qualified to act as a volunteer arbitrator.

7.23 (c) The volunteer arbitrator may request additional documents or appearances
7.24 from either the foreclosing lender or the eligible foreclosed borrower prior to making a
7.25 determination. The decision of the arbitrator is binding on both the foreclosing lender and
7.26 the eligible foreclosed borrower.

7.27 (d) The appointed arbitrator will act as a volunteer and may not charge any person
7.28 for the arbitrator's services or costs related to the arbitration.

7.29 Subd. 3. **Good-faith negotiation by foreclosing lender.** (a) A foreclosing lender
7.30 has not negotiated in good faith unless it offers in writing to modify the terms of
7.31 repayment of the eligible foreclosed loan to permit the eligible foreclosed borrower to
7.32 make monthly payments that the borrower would have had the reasonable ability to pay as
7.33 of the date the loan was originated or, if the borrower's income and financial resources
7.34 have increased since the loan was originated, monthly payments that the borrower has the
7.35 current reasonable ability to pay.

8.1 (b) For purposes of this section, "monthly payments" includes principal, interest,
8.2 real estate taxes, homeowner's insurance, assessments, and mortgage insurance premiums,
8.3 as applicable.

8.4 (c) For purposes of this section, "reasonable ability to pay" shall be determined
8.5 based on the following:

8.6 (1) the income and financial resources available to the borrower at the time the
8.7 loan was originated, provided that tax returns, payroll receipts, bank records, or other
8.8 similarly reliable documents that verify the borrower's income and financial resources at
8.9 the time of origination shall replace unverified statements of income or financial resources
8.10 contained in the loan application, and such verified information shall serve as the basis for
8.11 computing the borrower's reasonable ability to make monthly payments; or

8.12 (2) if the borrower's income and other financial resources have increased since the
8.13 loan was originated, the borrower's current income and other financial resources to the
8.14 extent such information can be verified by tax returns, payroll receipts, bank records, or
8.15 other similarly reliable documents.

8.16 (d) There is a presumption that the borrower has the reasonable ability to pay if the
8.17 monthly payments do not exceed a combined debt-to-income ratio of 41 percent based on
8.18 the borrower's documented and verified monthly gross income, provided the borrower
8.19 has sufficient residual income as defined in Code of Federal Regulations, title 38, section
8.20 36.4337(e).

8.21 **Sec. 8. [583.39] NOTICE OF RIGHT TO DEFERMENT.**

8.22 Subdivision 1. **Notice requirement; form and delivery of notice.** Every
8.23 foreclosing lender shall send to each borrower who has an eligible foreclosed loan a notice
8.24 of right to deferment. The notice of right to deferment shall be in the form of, and subject
8.25 to the delivery requirements specified in, section 580.041, subdivision 1b. The notice of
8.26 right to deferment must also indicate an address at which the foreclosing lender will
8.27 accept service of an affidavit of deferment under section 583.36, subdivision 2. No notice
8.28 is required for a foreclosure commenced on or before the effective date.

8.29 Subd. 2. **Content.** The notice required by this section must appear substantially
8.30 as follows:

8.31 "Emergency Help For Homeowners in Foreclosure:

8.32 IMPORTANT: You are eligible to have the foreclosure of your home stopped until at
8.33 least (end of deferment period).

S.F. No. 242, as introduced - 86th Legislative Session (2009-2010) [09-1014]

9.1 The state of Minnesota recently passed a law that lets homeowners stop a foreclosure sale.
9.2 To qualify, you must currently live at the home in foreclosure and intend to live at the
9.3 home until the end of the deferment period.

9.4 You will also need to complete and sign a special form (called an "affidavit") and provide
9.5 that affidavit to us at the following address: (insert address in the state of Minnesota).

9.6 There are many government agencies and nonprofit organizations that can help you
9.7 complete this affidavit. For the name and telephone number of an organization near
9.8 you, please call the Minnesota Housing Finance Agency (MHFA) at (insert telephone
9.9 number/Web site). The state does not guarantee the advice of these agencies.

9.10 **Do not delay** dealing with the foreclosure because your options for foreclosure deferment
9.11 **end with the foreclosure sale."**

9.12 Sec. 9. **[583.40] BAD FAITH OR RECKLESS VIOLATION.**

9.13 A foreclosing lender who acts in bad faith or recklessly in violation of sections
9.14 583.35 to 583.39 shall be liable to a person injured by the violation for actual damages,
9.15 statutory damages of up to \$25,000, punitive damages in an amount determined by the
9.16 court, costs, and reasonable attorney's fees.

9.17 Sec. 10. **EFFECTIVE DATE.**

9.18 Sections 1 to 9 are effective seven days following final enactment.